

# **EXHIBIT 7**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

TRINITY LUTHERAN CHURCH OF  
COLUMBIA, INC.

Plaintiff,

v.

Carol S. Comer, in her official  
capacity as Director of the Missouri  
Department of Natural Resources Solid  
Waste Management Program,

Defendant.

Case No. 2:13-cv-4022-NKL

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**DECLARATION OF KEVIN H. THERIOT IN SUPPORT OF  
PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS**

I, KEVIN H. THERIOT, under penalty of perjury, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am filing this declaration to demonstrate the reasonableness of both my hourly rate and the total amount of compensable time that I incurred in this case.

**Background**

2. I have worked on select aspects of this case. My work primarily related to reviewing and editing briefing related to the appeal to the Eighth Circuit Court of Appeals and also to the United States Supreme Court.

3. I am a 1991 graduate of Vanderbilt Law School. For the past twenty-four years, my practice has focused on constitutional law, specifically religious

freedom, freedom of expression, and civil rights law. During that time, I have worked for three prominent public interest law firms that practice litigation in these areas: the Rutherford Institute (1993–94), the American Center for Law and Justice (1994–2001), and Alliance Defending Freedom (2003–present).

4. Currently, I am Senior Counsel with Alliance Defending Freedom, where I lead one of our litigation teams. I am actively involved in every aspect of litigation, including research, drafting briefs and motions, discovery, and oral argument.

5. I am admitted to the bar in the following states: Arizona, Florida, Georgia, Kansas, Missouri, Tennessee, Texas, and Virginia. I am also admitted to the Supreme Court of the United States; the United States Courts of Appeal for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits; and numerous federal district courts.

6. For the bars and courts in which I have been admitted, I am a member in good standing and there are no grievance proceedings or any other disciplinary actions pending against me. In addition, I have never been held in contempt of court, censured, disbarred, or suspended by any court.

7. In my twenty-four years of practicing constitutional law, I have been counsel of record in cases involving constitutional issues before several federal courts of appeal, including the Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth,

and Eleventh Circuits.

8. I have served as lead counsel or co-counsel in dozens of cases involving constitutional issues, including *Women's Health Link v. Ft. Wayne Pub. Transp. Corp.*, 826 F.3d 947 (7th Cir. 2016); *Cochran v. City of Atlanta*, 150 F.Supp.3d 1305 (N. D. Ga. 2015); *American Atheists, Inc. v. City of Detroit Downtown Dev. Auth.*, 567 F.3d 278 (6th Cir. 2009); *Green v. Haskell Cnty. Bd. of Comm'rs*, 568 F.3d 784 (10th Cir. 2009); *Doe v. Tangipahoa Parish Sch. Bd.*, 494 F.3d 494 (5th Cir. 2007) (en banc); *Children First Found., Inc. v. Martinez*, 169 Fed. Appx. 637 (2d Cir. 2006); *Selman v. Cobb Cnty. Sch. Dist.*, 449 F.3d 1320 (11th Cir. 2006); *Harper v. Poway Unified Sch. Dist.*, 445 F.3d 748 (9th Cir. 2006), *vacated as moot*, 127 S. Ct. 1484 (2007); *Davey v. Locke*, 299 F.3d 748 (9th Cir. 2002), *rev'd*, 540 U.S. 712 (2004); *Gentala v. City of Tucson*, 244 F.3d 1065 (9th Cir. 2001) (en banc), *judgment vacated*, 534 U.S. 946 (2001); *S.D. Myers, Inc. v. City & County of S.F.*, 253 F.3d 461 (9th Cir. 2001); *Doe v. Sundquist*, 106 F.3d 702 (6th Cir. 1997); *Lister v. Def. Logistics Agency*, 482 F. Supp. 2d 1003 (S.D. Ohio 2007); *Netherland v. City of Zachary*, 527 F. Supp. 2d 507 (M.D. La. 2007); *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004); *Alons v. Iowa Dist. Court for Woodbury Cnty.*, 698 N.W.2d 858 (Iowa 2005).

### **Preclusion of Other Employment**

9. By working on Trinity Lutheran's case, I was precluded from working

on other matters or taking on other representation that I might otherwise have been able to take on.

10. This case imposed time limitations on my schedule as it required extensive research and writing in order to vindicate Trinity's constitutional rights. The novel constitutional challenges necessitated by Defendant's efforts to justify its unconstitutional policy required extra amounts of my time, which precluded me from working on other matters.

11. This case would have been undesirable for most attorneys to undertake because it lacked a guaranteed fee.

#### **Reasonableness of Rate**

12. As a non-profit organization, Alliance Defending Freedom represents its clients on a *pro bono* basis. Our clients do not pay for our services or the costs of litigation.

13. The *pro bono* representation of our clients and the national scope of our practice mean that we do not currently have internal billing rates. Alliance Defending Freedom's attorneys' fees rates are determined by billing practices in the legal market where a case is pending.

14. I have investigated and obtained information to familiarize myself with the hourly billing rates of attorneys with skill and experience in the First Amendment area of law who practice in the Kansas City, Missouri, area near where this case

originated, as well as attorneys who practice before the United States Supreme Court.

15. My billing rate of \$500.00 per hour for my time in this case is consistent with the prevailing market rate in the Missouri area, where many attorneys of my experience would bill in excess of \$500.00 per hour to litigate a complex First Amendment case as the concurrently filed declaration of Charles Hatfield attests. This rate is also reasonable in light of my experience in constitutional law.

16. Additionally, my rate is very reasonable for practice before the United States Supreme Court, as the concurrently-filed declaration of frequent Supreme Court practitioner Paul Clement attests.

17. Few attorneys practice First Amendment constitutional litigation, fewer practice constitutional litigation on behalf of plaintiffs against governmental entities, and even fewer practice exclusively in this area of law. The intent of Congress when it authorized attorney's fees and costs under 42 U.S.C. § 1988 was to permit plaintiffs to bring constitutional claims against governmental entities and also to ensure that the cost of litigation on behalf of plaintiffs seeking to vindicate their constitutional rights would not serve as a barrier to bringing such actions. Trinity Lutheran Church would not have been able to bring this case without the prospect of reasonable attorney's fees and costs being awarded.

### **Reasonableness of Time and Expenses Incurred**

18. The concurrently filed itemized statement sets forth my task-based time based upon contemporaneous time records kept via the timekeeping function on in-house software as I preformed the work. I exercised my billing judgment by reducing duplicative, administrative, or otherwise unreasonable time expenditures. These reductions are individually documented in the itemized statement.

19. The total time I incurred on this case is 16.3 hours. After I reviewed my time and exercised critical billing judgment, this amount was reduced to 14.8 hours. At a billing rate of \$550.00 per hour, this results in a current amount of \$8,140.00 that may properly be claimed against Defendant.

20. The concurrently filed declarations of regular Supreme Court practitioner Paul Clement as well as mid-Missouri practitioner Charles Hatfield attest to the fact that the total time that Alliance Defending Freedom incurred in this case, including my total compensable time, is very reasonable for this type of case with its procedural history.

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 12th day of July, 2018, at Scottsdale, Arizona.

s/ Kevin Theriot

KEVIN H. THERIOT

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